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SUPREME COURT, U.S.

(3)

No. 06-399

In The

Supreme Court of the United States

O'RANE M. CORNISH, SR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

SUPPLEMENT

O'Rane M. Cornish, SR.
Petitioner
Represents Himself
3804 Shady Hollow Lane
Memphis, TN 38116-4039.

October 19, 2006

QUESTIONS PRESENTED

QUESTION 1:

Whether the unavailable 'municipal building permitting' documentary evidence, the only recognized objective, positive proof within the local municipality, of: (a) The construction and existence of any building; and (b) The existence of building construction projects; both pivotal, dispositive issues in this case, qualifies under the aegis of Rule 33 Newly Discovered evidence, given the uniquely peculiar, distinguishing circumstances and fact pattern of the Case.

QUESTION 2:

Whether as to the same case and same issue, (a) The District Court's Order overruling the previous decision of the Appellate Court, followed by, (b) The Appellate Court's decision affirming the District Court's Order; constitute violations of the settled doctrines of: (1) "The Law of the Case"; and (2) "The Law of the Circuit"; and "The Mandate Rules"; and longstanding concepts of precedent; and so raises question of reasonableness and fairness in general, and on the whole, evidences a violation of the Due Process Clause of the U.S. Constitution.

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SUPPLEMENT

At the time of Cornish's initial filing of his petition, he was confined at FCI-Oakdale with the usual limitations of access to informational, legal and his trial records and documents. Indeed, while at Oakdale, the limited amount of records he had access to was the result of the protective Order issued December 14, 2004 by the United States District Court, Eastern District of Texas at Texarkana, Texas. He was released on April 21, 2006 and so he now has virtually full access to all information, record, documents, files and legal technical assistance, including ongoing effort to retain competent appellate counsel.

Given all of this, he now supplements his Petition, to bring to the Court's attention with specificity he could not achieve before, trial and legal information to which he now has full access, and the dramatic impact of the of the "newly available documents" along side the testimony.

First, the specific trial testimony of the "single expert authority witness", Doris Lee Austin, "Austin" Deputy Administrator, Memphis & Shelby County Office of Construction Code Enforcement, (CCE), with a comparative summary analysis of the "newly available municipal building permitting documents" at issue and which are graphically displayed at Appendix C to his Petition.

Austin's testimony appears in the record as Reporter's Transcript (RT), Volume I, page 151, Line 1 through page 159, Line 5. [TR. Vol. 1p151:L1-p159:L5]. It is committed to this Court's reading. This presentation is configured as alternate Austin trial testimony followed by brief summary analysis.

Austin on Direct, Rt. Vol.Ip151:L1-10.
Q: Ma'am, would you please state your full name?
A: Doris Lee Austin.

Q: And, Ms. Austin, what is your occupation?
A: I'm Deputy Administrator of Memphis and Shelby County Construction Code Enforcement.
Summary Analysis :

Beyond this Austin testimony, nothing else to which she testified is credibly. In other words, when compared with the "newly available municipal building permitting documents" she is plainly shown to have testified falsely, mistakenly, confusingly to Cornish's detriment and severe prejudice.

Austin Direct cont'd TR. Vol. I: p151:L11-18
Q: And can you tell us essentially what the deputy administrator does of that Agency?
A: It's the day-to-day operation of code enforcement including ..... issuing.... permits, license, ...
Q: And your office issues construction licenses, permits, and also inspects properties?
A: That's correct.
Summary Analysis:

Austin's Falsity 1: Neither she or her office issues contractor's "license" in the State of Tennessee. The State issues such licenses via its Board for Licensing Contractor's at Nashville, Tennessee.

Austin's Direct cont'd. TR. Vol. I: p152:L14-p153:L3:
Q: Are you familiar with Mr. O'Rane Cornish?
A: With the company, yes.
Q: What is the company that he's associated with?
A: He has what we call a B, C and A license which is building construction, residential.
Q: Residential?
A: Residential.
Q: What is the company name that he has that license under?

A: 6C/Dahcor Corporation.
Q: Under that license, can 6C/Dahcor undertake any commercial building?
A: No, sir.
Q: Only residential?
A: Yes, sir.
Summary Analysis:

This testimony is not merely incredible, it is false as to its premise and theory, and for good measure, is directly contradicted by the 'newly available municipal building permitting documents' at App. C. According to her testimony, she is familiar with Cornish's company and that he could only do residential construction under a "license" that she earlier falsely testified that she issued". It is notable that she did not know the name in which his license was issued. This court is now directed to App. C, the municipal building permitting documents displayed at App. 12, 13 and 14.They are commercial applications, permits, inspection report and Certificates of Occupancy. They also show his company's name in which his license is listed. They singly and cumulatively contradict her testimony in its entirety.

CONTRADICTION 1: The "newly available document" at Appx. C, App. 12, fig. 1.1 is a commercial permit B0737678 for 4791 Tchulahoma Road, **issued** by Austin's office. It shows checked off with an "**x**", Business, which is commercial — as opposed to residential. It is a direct contradiction of her testimony at p.152:L14-p.153: L3.

CONTRADICTION 2: The "newly available document" at Appx. C, App 12, fig. 1.2 is the commercial permit application 737678 for 4791 Tchulahoma Road, **submitted** by Cornish to Austin's office. It shows checked off with an "x", Business, which, as noted above is commercial

— as opposed to residential. It directly contradicts her testimony at p. 152:L15-p.153:L3.

CONTRADICTION 3: The "newly available document" at Appx. C, App. 12, fig. 1.3 is also the commercial buidling permitting document for 4791-7 Tchulahoma Road, **submitted** by Cornish to Austin's office. It shows checked off with an "x", Business, which, as above noted is commercial — as opposed to residential. It directly contradicts her testimony at p. 152:L14-p153:L3.

CONTRADICTION 4: The "newly available document" at Appx. C, App. 12, fig. 1.4 is the commercial building permitting document for 4730 Tchulahoma Road, **issued** by Austin's office. It shows checked off with an "x", Business, which as earlier noted is commercial — as opposed to residential. It directly contradicts her testimony at p. 152:L14-p153:L3.

CONTRADICTION 5: The "newly available document" at Appx. C, App. 12, fig. 1.5, is the commercial building permitting document for 4730 Tchulahoma Road, **submitted** by Cornish to Austin's office. It shows in writing "Business office" under "Business Use", and again at "Use of Bldg.", which indicates commercial as opposed to residential. It directly contradicts her testimony at p. 152: L14-p153:L3.

CONTRADICTION 6: The "newly available document" at Appx. C, App. 14, fig. 2.1, is the commercial building permitting document B0737688, **issued** by Austin's office, for 'a restaurant named "Chitlin-N-Thangs". It shows checked off with an "x" Business, and at Use of Bldg, "Office". It is therefore commercial. It directly contradicts her testimony at p. 152:L14-p153:L3.

CONTRADICTION 7: The "newly available document" at Appx. C, App 14, fig. 2.3, is the commercial building Certificate of Occupancy B0737688, for the restaurant named "Chitlin-N-Thangs", issued by Austin's office. It shows business [BUO]. It is commercial. It directly contradicts her testimony at p. 152:L14-p153:L3. This document is issued only when a contractor successfully completes the building project for which he pulled the permit.

CONTRADICTION 8: The "newly available documents at Appx. C, App 15, fig. 3.1, is the commercial building permitting document 725309 for 3383 Park Avenue, PCD, **submitted** to Austin's office. It shows checked, "business". It is commercial. It directly contradicts her testimony at p. 152:L14-p153:L3.

CONTRADICTION 9: The "newly available building permitting document at Appx. C, App 15, fig. 3.2, is the commercial building permitting document B0725307 for 3383 Park Avenue, PCD, **issued** by Austin's office. It is business which as noted is commercial. It directly contradicts her testimony at p. 152:L14-p153:L3.

CONTRADICTION 10: The "newly available document" at Appx. C, App 15, fig 3.4, is the commercial building Certificate of Occupancy B0725309, for 3383 Park Avenue, Personal & Career Development [PCD], **issued** by Austin's office. It shows business [BUO]. It is commercial. It directly contradicts her testimony at p. 152:L15–p153: L3. This document is only issued when the contractor successfully completes the building project for which he pulled the permit.

In sum, the foregoing ten highlighted newly available municipal documents contradicts and disproves Austin's testimony that Cornish and his Company could do only residential construction.

Austin's Direct cont'd. TR. Vol.Ip153:L17-21.
Q: Does the name Manufacturing Technologies....appear in your records as any company for which a permit was taken out or an inspection given for commercial permit of building
A: No, sir.
Summary Analysis:

The "newly available municipal building document" 73767, at Appx. C, App12, fig 1.3, shows at Owner/Tenant "Mfg [Manufacturing] Technologies, and class of work, "new" is circled. Again, Austin's testimony is contradicted by the documentary evidence.

Austin's Direct cont'd TR. Vol. Ip153:L22-24; p154:L9-18.
Q: Has Mr. Cornish applied for some commercial permits?
A: Yes, sir.
....
Q: Was he allowed to in fact complete those because of his license?
A: No.
Q: So of the four commercial permits he applied for, he was not allowed to complete any of them; is that correct?
A: No.
Q: And Manufacturing Technologies was not any of those?
A: No, sir.
Summary Analysis:

The "newly available municipal building documents" at Appx. C, App. 14, fig. 2.3 and at App 15, fig 3.3, as noted earlier, are the Certificates of Occupancy for the very

projects she said Cornish was never allowed to complete. The Certificates are issued only after the contractor who pulled the building permit, successfully completes the construction as determined by a final inspection performed by a building inspector from Austin's office. In effect, if Cornish did not successfully complete the project, the Certificate of Occupancy displayed at App 14 and 15 would never have been issued. These documents, Figs. 1.1, 1.2, 1.3, Figs. 2.3 and 3.4, directly contradict Austin's testimony.

Austin on Cross Examination: RT. Vol.Ip154:L22-p157:L7.

Here, not only did Austin continue her false testimony, but it was also confused.

Austin on Cross at RT. Vol.Ip155:L11-20:

Q: ....Now to your knowledge, you didn't know anything about him doing a commercial building on Tchulahoma Road, did you?

A: Yes, I do.

Q: You know that that building was built?

A: I have records of a building on Tchulahoma Road, yes, ma'am.

Q: You have records of a 22,000 square foot building on Tchulahoma Road?

A: I went by the address. I can't tell you the specifics without looking at the permits.

Summary Analysis:

Here, Austin testified that she had records... of a 22,000 square foot building on Tchulahoma Road. That she went by the address and by implications saw the building. But, according to her testimony, she could not be specific. She didn't bring the building permitting documents [e.g . those displayed at Appx. C, App 12, 13, 14 and 15]. But look at her further testimony.

Austin on Cross RT.Vol.Ip156:L7-15:
Q: Was this a huge building?
A: I don't know. I have never been out there.
Q: I thought you said you went by there?
A: No, no.
Q: So you never went by and saw the building actually?
A: No.
Summary Analysis:

Austin testified confusingly. First, she testified that she went by the building address. Then, pressed for specifics, she testified that she never went out there; and she denied what she earlier testified that she did.

Austin testified falsely on direct. She testified falsely and confusingly on cross examination. And, in any event, she is wholly contradicted by the "newly available municipal building permitting documents" in the absence of which she testified. Her testimony on Redirect examination was not much better, indeed it got worse because her testimony became deliberately misleading with prosecutorial plodding.

Austin on Redirect RT.Vol.Ip157:L13-21.
Q: Ma'am, that address was 4370 Tchulahoma Road, wasn't it?
A: Uh-huh.
Summary Analysis:

That is false. 4370 Tchulahoma is not an address at issue, and possessed no relevance to the case. Yet, the address is further reinforced into the minds of the jury that it is the relevant address at issue.

Austin on Redirect cont'd, RT. Vol.Ip157:L19-20
Q: That's what we're talking about, 4370 Tchulahoma Road.

Summary Analysis:

The false information charge against Cornish pertains to the accuracy of this testimony. The address at issue, is 4730 Tchulahoma and NOT 4370 as the jury was informed by her testimony and the prosecution's testimonial phraseology. The "newly available building permitting documents" at Appx. C, App 12, fig. 1.4, 1.5, contradicts the entire testimony on redirect. The Court and the jury were left totally confused, so much so, it called for a sidebar conference. The colloquy is telling:

COLLOQUY, RT. Vol. Ip157L23-p158:L17

THE COURT: Can you all come up here just a minute?

THE COURT: .....

Mr. DiSCENZA: That address is.... we're going to prove absolutely where 4370 Tchulahoma Road was.

THE COURT: So I don't need to worry about the fact that the jury is at this point is undoubtedly confused?

Mr. DiSCENZA: No.

THE COURT: All right. I just wanted to make sure.

Mr. DiSCENZA: Not at all

THE COURT: I just wanted to make sure there was going to be something else on this subject....I didn't want the jury left wondering whether somebody went out and looked at some site.

Mr. DiSCENZA: We're going to prove that.

Summary Analysis:

The record shows his promise to be hollow and unkept. Someone went out there. App 13. As the "newly available municipal permitting documentary evidence" shows, the prosecution, with the false, confused and misleading testimony of its only expert authority witness, Austin, could not prove where the 4370 Tchulahoma address was, because, not only was that address not relevant to the case against Cornish, in reality, it does not exist.

The foregoing constitute the testimony of Doris

Austin, the prosecution's ace witness — indeed, the only witness relied on to carry its burden that Cornish misrepresented his construction, and the existence of the building at issue at a time and place as represented on the form to the factor; and the existence of the 4730 Tchulahoma Road, Alcor construction project.

Austin testified in the absence of her very own Code Enforcement documents. They were not available at trial, but were located thereafter and are now before the Court as "newly available".

But for the absence of these now 'newly available building permitting documents" the outcome at trial would have been quite different, especially as to Counts 1, (2-8) and 10. United States v. Bagley, 473 U.S. 667, 682, 105 S. Ct. 3375, 87 L.Ed.2d 481 (1985). The probability of a different result is sufficient to undermine confidence in the outcome of the proceeding. Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L.Ed. 2d 674 (1984). It must not be overlooked that due process is fully involved here.

Finally, the prosecution did not present an overall strong case. After all, it relied upon only Austin of Code Enforcement to carry its burden.

The record reveals that Cornish presented three eyewitnesses to the Construction: (1) Leavette Robinson, a commercial plumber, who testified that he lived across the Street (Tchulahoma Road) from the construction site, and saw Cornish's construction of the building, day to day, from start to finish, and that he himself visited it up close at completion.RT.Vol.IIp269:L6-22. (2) Antonio Robinson, operator of his own construction material hauling business, who testified that he remembered hauling materials (sand) to the site of the construction, and recall witnessing the construction and existence of the building at issue. RT. Vol. Ip273:L19-p274:L16. He testified that "it was built real nice". Rt. Vol.Ip275:L16-18. And (3) Mrs. Aldith S. Cornish,

deceased spouse of Cornish, who testified that she saw "he [Cornish] place a brand new buildin{ on the empty lot beside the church". Rt. Vol.Ip282:L7-9. And (4) Cornish himself who testified at Rt. Vol.Ip301:L6-8, that in late 1994 and 1995 he constructed the building at issue. But, he did not have his documentary records, they couldn't be found. As a result, Doris Austin, Deputy Administrator, carried the day. Her testimony overwhelmed the testimony of all four of his witnesses. The "newly available municipal building permitting documents" reveal that she testified falsely in there absence. More likely than not, these documents would have resulted in a different outcome at trial. They are proof of what they state. United States v. McCoy, 193 US 543, 24 S.Ct. 528, 48 L.Ed.805.

The silence of Rule 33 as to "newly available evidence" being the basis for new trial; the confusion within and among the Circuits as to same; and the lack of, to this point, guidance from this Court as to 'a standard' to accommodate the circumstances here presented; should not now be allowed to cause a conviction to rest on the instant cases's pervasive, testimonial evidentiary falsities brought forth by the "newly available municipal building permitting documents" above highlighted and described. Review this case and set the guidance as requested by Cornish in his petition.

Respectfully submitted,

O'Rane M. Cornish, Sr.,
Represents Himself.